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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,500	08/19/2003	James G. Chaussee	J-3789	5529

28165 7590 09/27/2006

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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT PAPER NUMBER

1615

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/643,500	Applicant(s) CHAUSSEE ET AL.	
	Examiner Lakshmi S. Channavajjala	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Receipt of IDS dated 1-28-05 is acknowledged.

Claims 1-21 are pending in the instant application.

Claim Rejections - 35 USC § 112

Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Instant term "intermediate" does not specify if the claimed intermediate is a compound or a composition; what kind of an intermediate –is it a reaction intermediate, which with the addition of the claimed surfactant, results in a different compound? In the absence of a clear distinction, it is unclear as to what are the meets and bounds of the claimed term. With respect to claim 2, it is not clear from the claim if the "ALOE VERA 200% " is the amount of aloe vera or if the product is identified as such. A clarification and a correction are requested.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,902,225 to Monson in view of EP 170 269 (EP) (both submitted on PTO-1449).

Monson teaches (applicants admit on page 1 of the instant specification) a post foamable skin or hair compositions composition comprising a concentrate and a diluent, of which the former reads on the instant "intermediate" (see examples). Examples 1-9 reveal that the concentrate of Monson comprises surfactants such as decyl polyglucoside, triethanolamine, isobutene, isopentane (read on instant propellants), Carbopol (polymer), an emollient such as dimethicone copolyol (reads on the moisturizer of claim 1 and 17) and other additives. The diluent of the composition contains sodium bicarbonate and citric acid (examples). The ratio of citric acid to bicarbonate taught by Monson is within the range of instant claim 13. Monson fails to teach the claimed ratios or the percentages of the blend capable of generating carbon dioxide, the blend of polymer, ratios of the propellants isopentane and isobutene or the claimed moisturizers. However, generally, differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. "Where the

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general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Accordingly, optimizing the percentages or ratios of the blend capable of generating carbon dioxide, and the ratios of the propellants isopentane and isobutene. While Monson does not teach a blend of polymers, the reference suggested several polymers for adjusting the viscosity of the composition (col. 7, L 35-44) and accordingly, in the absence of any unexpected advantage, one of an ordinary skill in the art would have employed one or more polymers for adjusting the viscosity of the composition at the desired level. Monsoon further teaches the composition as a post-foaming preparation that is present in a container, wherein the pressure of the composition when present in the composition is between 10-60 psig and includes the claim limitations of 15 and 16.

Monson fails to teach the claimed lactic acid and specific moisturizers.

EP also teaches skin or hair compositions in the form of shampoos, conditioners etc., similar to Monson. The composition of EP also comprises a substance capable of emitting carbon dioxide emission, in addition to surfactants, vitamin E acetate (reads on claimed moisturizers of claims 2 & 19), lactic acid, lactate, etc (see examples 9, 11, 12 etc), the entire composition being present in a container. EP teaches addition of organic acids such as citric acids, lactic acids as pH modifiers to the final composition (pages 8 & 9). Thus both Monson and EP are directed to analogous art and It is prima facie obvious to combine two compositions each of which is taught by the prior art to be

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useful for the same purpose, in order to form a third composition to be used for the very same purpose. The idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980). Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to include lactic acid and vitamin E acetate of EP in the post-foaming composition of Monson because EP suggests that the acids such as lactic acid provide buffering activity and both the references desire the presence of components such as emollients, skin treatment or conditioning agents such as glycerin, humectants, antibacterial agents, vitamins etc. Thus both Monson and EP are directed to analogous art and It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose. The idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -6.30 PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala
Examiner
Art Unit 1615
September 18, 2006